In the light of these principles it would seem to be clear that in the present case, having regard to the nature of the affidavits produced, there is an element of doubt which must be resolved in favour of the appellant.

I would add that on the general question of committal to prison on account of a failure to comply with some requirement of a civil statute or rule Scrutton L.J. in *In re Weatherley*[5], said at page 486 :—

"I desire to say at once that I approach this case in a somewhat different attitude of mind from counsel for the respondent, who proposed a view which I think we should be slow to adopt in dealing with a case involving a question of the liberty of the subject. No doubt he has the support of the observation of Kay J. in *Petty* v. *Daniel*,[6] where he said: 'Much has been said to me about the liberty of the subject, but I have not much respect for the liberty of the subject who deserves to be in prison.' That is a dangerous principle; and I much prefer that which was expressed in *Evans* v. *Noton*[7] by Bowen L.J. in these words: 'every subject of Her Majesty has a right to say that he ought not to be put in prison unless every iota of the rules had been satisfied'; and was, in effect, repeated in *Wilde, In re*,[8] where Cozens-Hardy M.R. said that 'the Court could not be too strict in matters affecting the liberty of the subject, ...' I find no exception made there of proceedings against a solicitor."

As the relevant authorities which have determined this appeal were not cited to the learned Judge — nor indeed was any point made concerning the principles enunciated in them, the main argument having been confined to the point as to whether the appellant was acting in a fiduciary capacity — we intimated at the conclusion of the hearing of the appeal that while the appeal must be allowed there would be no order as to costs either here or below.

Tan Ah Tah and **Chua JJ.** agreed.

Appeal allowed.

Solicitors *Donaldson & Burkinshaw; Mallal & Namazie.*

NEW MALAYA CO. LTD. v. ABU BAKAR

[O.C.J. (Adams J.) April 17, 1961]

[Muar — Civil Suit No. 49 of 1960]

Practice and Procedure — Costs — Security for costs — Plaintiff ordinarily resident out of jurisdiction — O.65 r.6A — Whether movable property consisting of office furniture and fittings and sundry debtors can provide adequate security.

Practice — Order made in Chambers — Whether can be reconsidered before it is drawn up and issued.

The defendant in this case sought for an order under O.65 r.6A that the plaintiff be ordered to provide security for costs. The plaintiff, a company incorporated in Singapore, had no immovable property in the Federation, but had a branch office in Kuala Lumpur. Its managing director in his affidavit deposed that the value of furniture and fittings and sundry debtors in the Federation amounted to $50,000.00, but did not say how much of that sum was represented by sundry debtors.

Held: (1) the registration in Singapore of a judgment issued by the Supreme Court of the Federation of Malaya is a process which involves a judicial officer being put in motion and which may be the subject of dispute and is therefore not automatic;

(2) movable property consisting of office furniture and fittings and sundry debtors in the Federation amounting to $50,000.00 can scarcely be said to provide adequate security to see to it that if the defendant were successful he would not be denied the remedy of enforcing the order for costs against the plaintiff;

(3) since the normal practice where the plaintiff is resident abroad is to order the plaintiff to give the defendant security for costs the application must be granted.

A Judge can reconsider his order made in Chambers before it is drawn up and issued.

Cases referred to:—

(1) *Coldham* v. *Raub Australian Gold Mining Co. Ltd.* [1940] M.L.J. 51.

(2) *Ng Hui Lip & Anor.* v. *Chan Hwa Cheng & Ors.* [1958] M.L.J. 57.

(3) *In re Harrison's Settlement* [1955] Ch. 260; [1955] 2 W.L.R. 256; [1955] 1 All E.R. 185.

APPLICATION BY SUMMONS IN CHAMBERS.

H. N. McLeod for the plaintiff.

R. Ramason for the defendant-applicant.

Cur. Adv. Vult.

Adams J.: This was an application by Summons in Chambers by the defendant residing at 22 Jalan Penggaram, Batu Pahat, for an order under Order 65 r.6A that the plaintiff be ordered to provide security for costs. Mr. Ramason appeared for the applicant/defendant and Mr. McLeod for the plaintiff.

The action is one for the price of goods sold and delivered, namely live sheep which it is alleged were delivered to the defendant between December 1959 and August 1960. The defendant disputes the amount owing.

The plaintiff company is a company incorporated in the State of Singapore and although it is alleged that the plaintiff company have a branch in the Federation of Malaya at 28 Brickfields Road, Kuala Lumpur, the managing director's affidavit sworn on the 22nd March, 1961, does not say that the plaintiff company are the owners of the premises nor does he say that the plaintiff company is the owner of any immovable property whatsoever in the Federation.

When the matter was argued before me in Chambers I refused the application on the authority of *Coldham* v. *Raub Australian Gold Mining Co. Ltd.*[1] which was cited to me by Mr. McLeod. But before the end of Chambers Mr. Ramason asked me to reopen the matter as he had failed to bring to my attention the much more recent case of *Ng Hui Lip & Anor.* v. *Chan Hwa Cheng & Ors.*[2] in which Smith J. refused to follow the decision in the *Coldham case.* He submitted that I had powers to do so citing *In Re Harrison's Settlement*[3] as authority. I said that I would adjourn the matter to open Court which I did. The matter was then further argued.

Mr. McLeod objected on the grounds that I had already made the order but I clearly have power to reconsider before the order is drawn up and issued.

With respect to the learned Chief Justice who decided the *Coldham case*, I think he was wrong in saying that he would refuse to grant security for costs on the ground that the Straits Settlements Reciprocal Enforcement of Judgments Ordinance was *in pari materia* with the Judgments Extension Act of 1868. It happens that that part of his judgment is *obiter dictum* because he in fact decided the case by holding that the facts of the particular application did not warrant his exercising his discretion to order security.

I must therefore follow the judgment of Smith J. in *Ng Hui Lip case* in so far as he decided that the fact that the plaintiff is resident in Singapore is not a ground for refusing to order security for costs because the registration in Singapore of a judgment issued by the Supreme Court of the Federation of Malaya is not automatic. It is a process which involves a judicial officer being put in motion and which may be the subject of dispute. Both the *Coldham case* and the *Ng Hui Lip case* were concerned with section 369 of the Civil Procedure Code. This has been replaced by Order 65 r.6A of the Rules of the Supreme Court. This is identical with the English rule. It appears from the commentary in the *Annual Practice* that where the plaintiff is resident abroad security for costs will be ordered. Order 65 r.6A is very short and it is not so elaborate as section 369 of the Civil Procedure Code which requires the defendant to show that the plaintiff possesses sufficient immovable property within the Federation to satisfy the judgment of costs. The plaintiff company admits that the defendant has been to their premises in Brickfields Road. The defendant has deposed that he was informed (no doubt by the managing director) that the plaintiff company do not have any property movable or immovable in the Federation of Malaya. The managing director in his affidavit does not deny that they have no immovable property. He merely deposes that the value of furniture and fittings and sundry debtors in the Federation of Malaya amounts to $50,000. He does not say how much of this sum is represented by sundry debtors. Such movable property as this can scarcely be said to provide adequate security to see to it that if the defendant were successful he would not be denied the remedy of enforcing the order for costs against the plaintiff.

Since therefore it has been established that the plaintiff is resident in Singapore out of the jurisdiction and since the normal practice where the plaintiff is resident abroad is to order the plaintiff to give the defendant security for costs the application must be granted and the plaintiff must pay the costs.

Application granted.

Solicitors *H. N. McLeod; Murugason & Co.*

LAU KEE KAR v. MAT BIN SAADIN & ANOR.

[O.C.J. (Syed Sheh Barakbah J.) November 9, 1960]

[Alor Star — Kedah Civil Suit No. 78 of 1956]

Damages — Road Accident — Negligence — Principle for the assessment of damages.

The plaintiff as administrator of the estate of his infant daughter sued the defendant for damages for negligent driving. There were two main issues for consideration, namely whether the defendant who drove the car was negligent and whether the defendant driving the car was an agent or servant of the second defendant who was the owner of the car.

Held: (1) from the evidence it was the act of the first defendant who was driving that actually caused the accident and although the deceased was to a certain degree also at fault, it was the first defendant who was liable;

(2) on the facts of the case the first defendant was not the servant or agent of the second defendant and as such the second defendant was not responsible for the wrongful act of the first defendant;

(3) damages should be assessed on the principle of *Benham* v. *Gambling*. (2)

[Editorial Note: It would appear that *Tham Kwa Chin* v. *Choong Hoong Sum* [1954] M.L.J. 161 was not cited to the Court in this case. There it was decided that in assessing the damages and following the principle on question of *quantum* of damages laid down in *Benham* v. *Gambling* it should be borne in mind that the value of the money has fallen very much since that case was decided.]

Cases referred to:—

(1) *Tan Kwee Low* v. *Lee Chong & Anor.* [1960] M.L.J. 212.

(2) *Benham* v. *Gambling* [1941] A.C. 157.

ACTION FOR DAMAGES.

Lim Cheng Chuan for the plaintiff.

Wong Sheng Chan for the 1st defendant.

Huck Aik for the 2nd defendant.

Syed Sheh Barakbah J.: This is a case where the plaintiff as administrator of the estate of his daughter Law Mooi Seang, deceased, aged 6 years, sues the defendants for damages for negligent driving.

The facts in brief are that on the 28th day of July 1955 at about noon, defendant No. 1 who was driving car No. P 9027 with DW2 seated beside him along Jalan Sekerat, Sungei Patani, knocked down the said Looi Mooi Seang while she was crossing the road. She was taken to Sungei Patani Hospital where she died at about 3.00 p.m. the same day.

Defendant No. 2 who was the owner of the car was alleged by the plaintiff to be equally liable for the negligent driving of his agent or servant, defendant No. 1.

Unfortunately, there were no independent witnesses to this accident. The evidence available was only that of PW1 and PW2 and some circumstantial evidence.

According to PW1, when he was in his house he heard people shouting outside and he went out. He saw his daughter lying on the side of the road about four feet away from the